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16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18 ADDISON HEMPEL, CASSIDY
18 HEMPEL, CHRISTINE HEMPEL, HUGH
19 HEMPEL, and SOLUTION
19 THERAPEUTICS,
20

21 Plaintiffs,
22 v.
23

24 CYDAN DEVELOPMENT, INC.,
24 CYDAN II, INC., VTESSE, INC.,
25 SUCAMPO PHARMACEUTICALS,
25 INC., and DOES I-X and ROE
25 CORPORATIONS I-V, inclusive,
26

26 Defendants.
27

28 Case No. 3:18-cv-00008-MMD-VPC

29
30 **MEMORANDUM OF POINTS AND**
30 **AUTHORITIES IN OPPOSITION TO**
31 **DEFENDANTS' CONSOLIDATED**
31 **MOTION TO DISMISS FOR LACK OF**
32 **PERSONAL JURISDICTION**

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1 Plaintiffs Addison, Cassidy, Christine, and Hugh Hempel and Solution Therapeutics
2 (“Plaintiffs” or the “Hempels”) respectfully submit this Memorandum of Points and Authorities in
3 Opposition to the Consolidated Motion to Dismiss for Lack of Personal Jurisdiction by Defendants
4 Cydan Development, Inc. (“Cydan”), Cydan II, Inc., Vtesse, Inc., and Sucampo Pharmaceuticals.
5 Inc. ECF No. 11 (“DM PJ”).¹

PRELIMINARY STATEMENT

7 Defendants' motion to dismiss for lack of personal jurisdiction, or to transfer venue, should
8 be denied. Cydan deliberately targeted the Nevada-resident Hempels because the Hempels had
9 developed, in Nevada, a pharmaceutical asset that Cydan wanted to commercialize. Cydan entered
10 into a non-disclosure agreement with the Hempels, which was prepared in Nevada and governed
11 by Nevada law (the "Confidentiality Agreement"), and then breached the Confidentiality Agree-
12 ment by systematically misappropriating the Hempels' confidential material—including medical
13 research, patient data, FDA submissions and protocols, commercial plans, industry contacts,
14 know-how, and goodwill (the "Protected Material")—the *situs* of which was Nevada. After fos-
15 tering an on-going relationship with the Hempels over the course of more than eight months, Cydan
16 secretly formed Vtesse for the purpose of exploiting the Protected Material and competing with
17 the Hempels to obtain regulatory approvals for the Hempels' therapeutic drug treatment. As part
18 of this effort, Vtesse's executives visited the Hempels in their Nevada home, purportedly to reas-
19 sure the Hempels that the Hempels would be included in the joint development effort initiated by
20 Cydan, even though those false assurances were intended simply to stave off this dispute. Instead
21 of honoring their obligations to the Hempels, Cydan and Vtesse misappropriated and used the
22 Hempels' Protected Material, cut the Hempels out of the joint venture, obtained an FDA approval
23 in reliance upon the Hempels' Protected Material, and then sold Vtesse to Sucampo for \$200 mil-
24 lion. Now, Defendants brazenly contend that this Court lacks the power to compel them to answer
25 for their conduct in this jurisdiction.

¹ Unless otherwise stated, capitalized terms have the same definition as in the Complaint.

This is not a case in which the Defendants randomly or idiosyncratically came into contact with Nevada residents and are unexpectedly being haled into court in Nevada. Rather, Defendants subjected themselves to personal jurisdiction in Nevada based on their own, intentional misconduct directed at Nevada, knowing that the consequences of their conduct would be felt in Nevada. Cydan II and Sucampo are also subject to the Court's jurisdiction under theories of successor liability, agency, or alter ego status, in light of their unity of interests and integration with Cydan and Vtesse, respectively. Accordingly, the motion to dismiss for lack of personal jurisdiction should be denied, at the very least so that the parties can engage in jurisdictional discovery.

9 Defendants' application to transfer should also be denied. The Hempels' choice of the Dis-
0 trict of Nevada should be given "substantial deference" because they are residents of the district,
1 because their confidential information and trade secrets were misappropriated from the district,
2 and their injuries were felt in this district. Defendants, meanwhile, have not made any showing of
3 inconvenience, let alone the "strong showing of inconvenience" required to overcome the
4 Hempels' choice.

For these reasons, and those detailed below, Defendants' motion should be denied.

BACKGROUND

A. The Hempels' Successful Drug Development Efforts

18 Addison and Cassidy Hempel were born on January 23, 2004. See ECF No. 1 (“Com-
19 plaint”) ¶ 2. In 2007, the Hempel twins were diagnosed with Niemann Pick disease, Type C
20 (“NPC”). NPC is an ultra-rare, progressive neurological disease that causes severe disability and
21 death. *Id.* Currently, there are approximately 100 known cases of NPC in the United States. *Id.*
22 Addison and Cassidy were born, and have resided their entire lives in Reno, Nevada. See Decl. of
23 Hugh Hempel, dated April 23, 2018 (“Hempel Decl.”) ¶ 1.

24 Spurred by their daughters' diagnoses, Christine and Hugh Hempel both left their employ-
25 ment and invested approximately \$3 million of their personal time and money, along with millions
26 of dollars in donations they raised and *pro bono* work they elicited from world-class physicians.
27 to develop their own, privately-developed treatment for NPC. Compl. ¶ 3. The center of the

1 Hempels' efforts was their home in Reno, from which they promoted a new drug development
 2 business, Solution Therapeutics, to be incorporated as a Nevada corporation. *See* Hempel Decl. ¶
 3 2 & Ex. 3 ("Business Plan") at 4 (showing Hempels intended Solution Therapeutics to be a Nevada
 4 corporation).

5 The Hempels' innovative translational drug research program met with immediate success.
 6 resulting in unprecedented treatment approvals by the United States Food and Drug Administration
 7 ("FDA"), in 2009 and 2010, for the clinical use of 2-hydroxypropyl- β -cyclodextrin ("2HP β CD"
 8 or "cyclodextrin") in treating NPC. Compl. ¶ 4. These events, and the Hempels' commitment to
 9 advancing medical and research efforts through family and community-based funding, drew inter-
 10 national recognition and attention, including from the National Institutes of Health ("NIH"). *Id.* In
 11 May 2010, the FDA granted the Hempels' "Orphan Drug Status" for cyclodextrin, indicating its
 12 utility in treating humans, and the small NPC population. *Id.*

13 From the outset of their research, the Hempels hoped that they would be successful in
 14 identifying a therapeutic drug to help their daughters and other NPC patients. *See* Hempel Decl. ¶
 15 3. By 2013, the Hempels had a carefully compiled library of information related to their daughters'
 16 treatment, confidential FDA filings, medical and research data, goodwill, and industry relation-
 17 ships to facilitate obtaining FDA approvals for cyclodextrin. Compl. ¶ 42.

18 Because NPC is an ultra-rare pediatric disease, the Hempels anticipated that the successful
 19 development of a therapeutic drug treatment for NPC could entitle them to a "Priority Review
 20 Voucher" from the FDA. Compl. ¶ 7. A Priority Review Voucher may be used to expedite the
 21 FDA review of any other drug, and has been sold for as much as \$350 million. *Id.* The Hempels
 22 hoped to earn a Priority Review Voucher that could be sold by their company, Solution Therapeu-
 23 tics, to fund future research in NPC and to ensure that NPC treatments would be reasonably priced
 24 for those in the NPC community. *Id.* ¶ 41.

25 **B. Cydan Targets the Hempels' Protected Material in Nevada**

26 In the summer of 2013, Chris Adams, the then-Chief Business Officer of Cydan, contacted
 27 Hugh Hempel by LinkedIn and invited him to connect. *See* Hempel Decl. ¶ 4. Hugh's LinkedIn
 28

1 profile identified him, and his business interests, as in the “Reno, Nevada area.” *Id.* ¶ 4.

2 Hugh agreed to connect with Adams, and Adams followed up by email, indicating that
 3 Cydan was looking for “opportunities” to fund drug programs and invest in “develop[ing] orphan
 4 drugs to get them through proof of concept in human clinical trials.” Hempel Decl. Ex. 1 at 1.
 5 Adams and Hugh began a months-long conversation, during which Adams recruited Hugh from
 6 Nevada to visit Cydan’s offices in Massachusetts, so that the parties could discuss their collabora-
 7 tion. *See, e.g.*, Hempel Decl. ¶ 4 & Ex. 2 at 1-2 (Aug. 19, 2013 email).

8 Hugh agreed to visit Cydan on September 13, 2013, to discuss, among other things, the
 9 “Niemann Pick Type C market opportunity,” and “[c]yclodextrin (HPBCD) opportunities in other
 10 RARE markets.” *Id.* Ex. 2 at 1 (Sept. 11, 2013 email). Via email, Hugh told Cydan that he had
 11 “founded a virtual BioTech entity called Solution Therapeutics as the funding/development vehi-
 12 cle for this treatment,” and that the entity was “currently bootstrap funded primarily through [the
 13 Hempels’] sweat equity.” *Id.* In advance of the meeting, Hugh sent Cydan a copy of the 43-page
 14 Business Plan—clearly marked “Confidential”—which the Hempels had prepared based on their
 15 substantial investment and knowledge of cyclodextrin research and opportunities. *See* Business
 16 Plan. The Business Plan indicated that Solution Therapeutics was intended to be a “C-corp based
 17 in Reno, Nevada.” *Id.* at 4. Cristina Csimma, Cydan’s then-Chief Executive Officer—responded
 18 to Hugh’s email, writing, “the work you have done is truly amazing.” Compl. ¶ 48.

19 Hugh visited Cydan on September 13, 2013. Hempel Decl. ¶ 6. The meeting was attended
 20 by Chris Adams, Deborah (“Deb”) Geraghty (Vice President of Cydan, for Project & Portfolio and
 21 Development), and others. *Id.* The parties discussed the Hempels’ successes, to date, and the op-
 22 portunity presented by their development of cyclodextrin. *Id.* During this meeting, which lasted
 23 more than two hours, Hugh walked Cydan through the Business Plan, which detailed plans to seek
 24 an approval for cyclodextrin in treating NPC, pursue a Priority Review Voucher to be sold to a
 25 major pharmaceutical company, and reinvest the proceeds into research and treatment for the NPC
 26 community. *Id.* In connection with this meeting, Cydan told Hugh that it had not considered the
 27 Priority Review Voucher strategy for the development of cyclodextrin. *Id.*

1 Cydan was impressed, and followed up the next day. Noting that Hugh had returned to
 2 Reno, Geraghty said Cydan wanted to further discuss “how Cydan may be able to facilitate [cy-
 3 clodextrin’s] further translation to the clinic.” Hempel Decl. ¶ 7 & Ex. 4 at 1 (Sept. 14, 2014 email).
 4 Geraghty, specifically requested that Hugh (i) send his standard non-disclosure agreement, (ii)
 5 provide Cydan “access to [the Hempels’] ‘server,’ where [the Hempels] had data and other back-
 6 ground information,” and (iii) that Hugh introduce Cydan to Dr. Daniel Ory, a researcher at Wash-
 7 ington University that Cydan wanted to meet. *Id.*

8 The Hempels sent Cydan a confidentiality agreement, which Csimma executed. *See id.* ¶ 8
 9 & Ex. 5 (“Confidentiality Agreement”). The Confidentiality Agreement provided for the parties’
 10 mutual protection with respect to the disclosure of confidential information, and was governed by
 11 Nevada law. *Id.* 3. With the understanding that the Hempels were protected by Nevada law, the
 12 Hempels provided Cydan with access to all of their Protected Material, and engaged in an ongoing,
 13 collaborative relationship with Cydan, responding to Cydan’s inquiries and providing Cydan with
 14 additional information to facilitate a joint venture. *See* Hempel Decl. ¶ 8.

15 In December 2013, Geraghty emailed Hugh—in direct response to a request from Hugh
 16 for an update on Cydan’s views vis-à-vis the Solution Therapeutics project—stating that Cydan
 17 was still “dig[ging] in to the potential to move cyclodextrin forward” with Solution Therapeutics.
 18 *See id.*, Ex. 6. In January 2014, Geraghty emailed Hugh to tell him that they were “[m]oving for-
 19 ward for sure” with the venture. *See id.* Ex. 7 (Jan. 16, 2014 email). And on February 14, 2014,
 20 Adams and Hugh had a conference call to discuss next steps. Compl. ¶ 66.

21 **C. Cydan Forms Vtesse to Compete With The Hempels**

22 Cydan, however, misappropriated the Hempels’ confidential information and trade secrets.
 23 and diverted the cyclodextrin business opportunity to its affiliate, Vtesse. In May 2014, just months
 24 after assuring the Hempels that they were going forward with a joint venture, Cydan formed Vtesse
 25 without the Hempels’ knowledge or consent. Around the same time, Cydan broke off its commu-
 26 nications with the Hempels without explanation, *see* Hempel Decl. ¶ 10; Compl. ¶ 67, and termi-
 27 nated Geraghty, Compl. ¶ 68. Cydan secretly used the Hempels’ Business Plan and Protected
 28

1 Material to form, and solicit investors for, Vtesse. *Id.* ¶¶ 70-74.

2 After working in secret for months, in January 2015 Cydan publicly announced that it had
 3 formed a “spin-off company,” Vtesse, to pursue the same drug approvals and business strategy
 4 that the Hempels had introduced to Cydan. *See* Seifert Decl. Ex. 1 at 1 (Jan. 7, 2015 Cydan Press
 5 Release). Cydan placed its executives—Adams and Csimma—onto Vtesse’s Board of Directors,
 6 and conveyed the Protected Material to Vtesse (without the Hempels’ approval) for further devel-
 7 opment of the Hempels’ Business Plan. Compl. ¶¶ 70-73. Vtesse, in turn, enlisted intramural and
 8 extramural NIH researchers who also had confidential access to the Hempels’ drug development
 9 information and medical data, and paid them to develop the identical treatments the Hempels had
 10 been developing. *Id.* ¶¶ 75-91.

11 **D. Vtesse Meets with the Hempels at Their Home in Nevada**

12 Immediately after the public launch of Vtesse in January 2015, Vtesse’s CEO, Bernardus
 13 Machielse, and Vice President of Business Development, Ravi Venkataramani, contacted the
 14 Hempels. *See* Hempel Decl. ¶ 11 & Exs. 8-9 (January 2015 emails). On January 20, 2015, Ma-
 15 chielse acknowledged that in light of confidentiality concerns, Vtesse could not go forward “with-
 16 out the express permission of the parents,” *see id.* Ex. 8 (Jan. 20, 2015 email), and on January 26,
 17 2015 Machielse wrote to the Hempels that he wanted to meet “face to face,” so that they could
 18 “work through the open items” between them. *Id.* Ex. 9 (Jan. 26, 2015 email).

19 That meeting took place in Nevada when Machielse and Venkataramain traveled to the
 20 Hempels’ home, and the Hempels told the executives that Cydan and Vtesse could not simply cut
 21 them and the NPC community out of the venture. *See* Hempel Decl. ¶ 12. After the visit, Machielse
 22 wrote to the Hempels, acknowledging his visit:

23 Thanks so much for your hospitality yesterday, it was great to meet
 24 Addi, Cassi and you.

25 We are especially grateful for your feedback, input and support for
 26 our joint journey to bring cyclo[dextrin] over the finish line. Your
 27 work and commitment are an inspiration to us and I promise that
 28 we will work very hard to bring cyclodextrin over the finish line.

1 Feel free to contact us anytime, we hope we can continue to build
 2 out our relationship and align the community to bring a solution to
 3 the NPC children.

4 Hempel Decl. Ex. 9 (Apr. 3, 2014 email).

5 **E. Sucampo Acquires Vtesse and Subsumes It**

6 On April 3, 2017, Cydan announced “the acquisition of its first rare disease spin-out, Vtesse
 7 Inc., by Sucampo Pharmaceuticals, Inc.” Seifert Decl. Ex. 2 at 1 (Apr. 3, 2017 Cydan Press Re-
 8 lease). Cydan noted “Vtesse was launched by Cydan in 2015 to advance its orphan drug candidate,
 9 VTS-270,” *i.e.*, cyclodextrin, “for treatment of Niemann-Pick Disease Type C (NPC).” *Id.*
 10 Sucampo acquired Vtesse “for an upfront consideration of \$200 million,” including “the issuance
 11 of 2,782,678 shares of Sucampo Class A common stock and \$170 million of cash on hand.” *Id.*

12 Following the acquisition, Sucampo folded Vtesse into its operations. According to
 13 Vtesse’s press release, the acquisition “provide[d] Sucampo with VTS-270” and “[b]uilt upon
 14 Sucampo’s capabilities, global development platform and focus on specialized areas of high, un-
 15 met medical need,” and Vtesse employees were all “expected to join Sucampo.” *Id.* Ex. 3 (Apr. 3,
 16 2014 Vtesse Press Release). Vtesse moved its operations from Gaithersburg, Maryland to Rock-
 17 ville, Maryland, to consolidate with Sucampo. *Id.* Machielse—Vtesse’s CEO—was terminated
 18 from Vtesse, and became a consultant to Sucampo. Machielse Decl., ECF No. 11-2, ¶ 4.

19 Just eight months later, in December 2017, Mallinckrodt announced an agreement to ac-
 20 quire Sucampo, “including its commercial and development assets.” Seifert Decl. Ex. 4 at 1 (Dec.
 21 26, 2017 Mallinckrodt Press Release). Though VTS-270 was central to the Mallinckrodt/Sucampo
 22 deal, *id.*, Mallinckrodt only mentioned Vtesse as VTS-270’s “former owner,” *id.* at 2. Thus, the
 23 Mallinckrodt deal confirmed that Vtesse had become indivisible from Sucampo.

24 **F. Cydan II Takes Over Cydan’s Operations**

25 One month after orchestrating the sale of Vtesse to Sucampo for \$200 million, Cydan
 26 formed Cydan II on May 10, 2017. Seifert Decl. Ex. 6. Cydan publicly stated that Cydan II would
 27 be operated by the same “experienced team” that had operated Cydan, that Cydan II would “con-
 28 tinu[e] the mission of [Cydan],” and that the new funding would “extend [Cydan’s] operations for

1 another four years.” *Id.* Ex. 5 at 1. Thereafter, Cydan II supplanted Cydan as the public-facing
 2 operating Cydan entity. Indeed, the Cydanco website simply changed references to Cydan to ref-
 3 erences to Cydan II, Inc. *Compare id.*, Ex. 7 (cydanco.com snapshot as of Feb. 19, 2017) with Ex.
 4 8 (cydanco.com snapshot as of Apr. 19, 2018).

5 **ARGUMENT**

6 **I. DEFENDANTS’ MOTION TO DISMISS FOR LACK
 7 OF PERSONAL JURISDICTION SHOULD BE DENIED**

8 The parties agree that the Court may consider evidence by affidavit to determine if “mini-
 9 mum contacts” exist between the Defendants and the forum state. DM PJ 1. Defendants fail to
 10 note, however, that “uncontroverted allegations in the complaint must be taken as true,” and
 11 “[c]onflicts between parties over statements contained in affidavits must be resolved in the plain-
 12 tiff’s favor.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004).

13 Based on the facts as alleged in the Complaint and set forth in the Hempel and Seifert
 14 Declarations, this Court has specific personal jurisdiction over each of the Defendants. The alle-
 15 gations arise out of, and relate to, Cydan’s, Vtesse’s, and Sucampo’s purposeful contacts with
 16 Nevada. *See Daimler AG v. Bauman*, 571 U.S. 117, 126 (2014). Moreover, because Cydan was
 17 Vtesse’s promoter, and Vtesse knowingly benefited from Cydan’s contracts and torts, Cydan’s
 18 jurisdictional contacts are imputed to Vtesse. *See, e.g., Rees v. Mosaic Techs., Inc.*, 742 F.2d 765,
 19 768-69 (3d Cir. 1984).

20 The Court also has specific jurisdiction over Cydan II and Sucampo because they are suc-
 21 cessors, agents, and/or alter egos to Cydan and Vtesse. *See, e.g., Harris Rutsky & Co. Ins. Serv. v.*
22 Bell & Clements, 328 F. 3d 1122 (9th Cir. 2002); *Fairbanks Gold Mining, Inc. v. D & D Tire, Inc.*,
 23 No. 3:10-cv-00492-ECR-WGC, 2011 U.S. Dist. LEXIS 110244, at *10-12 (D. Nev. Sept. 23,
 24 2011). Notably, if personal jurisdiction exists in connection with one claim, but not others, the
 25 district court may exercise pendent personal jurisdiction over any remaining claims that arise out
 26 of the same “common nucleus of operative facts.” *Action Embroidery Corp. v. Atl. Embroidery,*
 27 *Inc.*, 368 F.3d 1174, 1180-81 (9th Cir. 2004).

1 **A. Defendants Are Subject to Specific
2 Jurisdiction Based on Their Purposeful Conduct**

3 “The Ninth Circuit has established a three-prong test for analyzing an assertion of specific
4 personal jurisdiction.” *Casun Invest, A.G. v. Ponder*, No. 2:16-CV-2925 JCM (GWF), 2018 U.S.
5 Dist. LEXIS 25564, at *4-5 (D. Nev. Feb. 16, 2018) (citing *Schwarzenegger*, 374 F.3d at 802):
6 “(1) The non-resident defendant must *purposefully direct* his activities or consummate some trans-
7 action with the forum or resident thereof; or perform some act by which he *purposefully avails*
8 himself of the privilege of conducting activities in the forum, thereby invoking the benefits and
9 protections of its laws; (2) the claim must be one which arises out of or relates to the defendant’s
10 forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and sub-
11 stantial justice, i.e., it must be reasonable.”² *Casun Invest, A.G.*, 2018 U.S. Dist. LEXIS 25564 at
12 *4-5 (emphasis supplied). “Purposeful direction” and “purposeful availment” are distinct analyses:
13 “[p]urposeful availment is for suits sounding in contract, whereas purposeful direction is for suits
14 sounding in tort.” *Id.*, at *23.

15 **1. Defendants Purposefully Directed
16 Their Activities At Nevada**

17 In regard to tort claims, “[t]o purposefully direct activities at a forum state, a defendant
18 must (1) commit an intentional act, (2) expressly aimed at the forum, (3) that causes foreseeable
19 harm in the forum.” *Alley Cat, Inc. v. Duncan*, No. 2:16-cv-02745-JAD-CWH, 2017 U.S. Dist.
20 LEXIS 164079, at *12 (D. Nev. Sep. 28, 2017).

21 The fundamental question is “whether the defendant’s conduct connects him to the forum
22 in a meaningful way.” *Id.* Generally, when a party “contacts” a forum resident and sends “soli-
23 tations” to the resident for purposes of developing a business relationship, or creates “continuing
24

25 ² Acknowledging these elements, DM PJ 8, Defendants do not argue—and thus have waived—
26 any issue concerning the second and third prongs of the analysis. *See Cruz v. Durbin*, No. 2:11-
27 cv-342-LDG-VCF, 2014 U.S. Dist. LEXIS 150328, at *24 (D. Nev. Oct. 20, 2014) (“[A]rguments
raised for the first time in reply are waived.”) (citing cases).

1 obligations” with a forum resident, he directs his contact at the forum—even if he never enters the
 2 forum. *See, e.g., Levinson v. Second Judicial Dist. Court*, 103 Nev. 404, 407 (1987) (ongoing
 3 obligations); *Haake v. Strudwick*, No. 1:14-cv-00212-CWD, 2014 U.S. Dist. LEXIS 168749, at
 4 *19 (D. Idaho Dec. 1, 2014) (contact and solicitations). Ironically, Defendants cite and rely upon
 5 *IPOX Schuster, LLC v. Nikko Asset Mgmt. Co.*, 191 F. Supp. 3d 790, 800 (N.D. Ill. 2016) (cited in
 6 DM PJ 10), where the court exercised specific jurisdiction over a non-forum defendant who never
 7 entered the forum because the defendant “initiated a dialogue with [the plaintiff], sought out its
 8 services, and began developing a relationship with it” before turning around and using the plain-
 9 tiff’s trade secrets. *Id.* That is precisely what happened here.

10 Cydan targeted Hugh Hempel—identified on his LinkedIn profile as a Nevada resident—
 11 with online messages. Cydan solicited a business relationship, premised on Cydan’s interest in a
 12 joint venture. Cydan knew the Hempels intended to form Solution Therapeutics, a C-corp based
 13 in Reno, Nevada. Cydan requested and obtained access to the cache of Protected Materials the
 14 Hempels had compiled and maintained in Nevada. Cydan then misappropriated those materials,
 15 and violated its fiduciary relationship with the Hempels by diverting the business opportunity to
 16 Vtesse. This is more than sufficient to find purposeful conduct aimed at the forum. *See, e.g., Lev-*
 17 *inson*, 103 Nev. at 407; *Haake*, 2014 U.S. Dist. LEXIS 168749 at *19; *IPOX Schuster*, 191 F.
 18 Supp. 3d at 800.

19 Before turning to specific application of the purposeful direction elements, it bears repeat-
 20 ing that Defendants are each directly liable for misappropriation. As detailed in Plaintiffs’ Oppo-
 21 sition to Defendants’ Consolidated Motion to Dismiss for Failure to State a Claim and Lack of
 22 Subject Matter Jurisdiction (“Pls.’ Opp’n FSC”), Cydan, Vtesse, and Sucampo are all liable for
 23 misappropriation, and thus are subject to the same jurisdictional analysis, because they knew, or
 24 had reason to know, that they were benefitting from trade secrets misappropriated from the
 25 Hempels. Pls.’ Opp’n FSC Argument II.D.1; *see also New Eng. Life Ins. Co. v. Lee*, No. 2:14-CV-
 26 1797 JCM (NJK), 2015 U.S. Dist. LEXIS 39462, at *20 (D. Nev. Mar. 27, 2015); *see also PMC,*
 27 *Inc. v. Kadisha*, 93 Cal. Rptr. 2d 663, 669-79 (Cal. Ct. App. 2000) (holding investors liable for

1 misappropriation by corporation even though misappropriation began before their investment).

2 **a. The Elements of Purposeful Direction Are Satisfied**

3 *First*, Defendants committed an intentional act. “[I]f a nonresident defendant intentionally
 4 harms an in-forum resident, then the first prong of the court’s jurisdictional inquiry is satisfied.”
 5 *Mayweather v. Wine Bistro*, No. 2:13-cv-210-JAD-VCF, 2014 U.S. Dist. LEXIS 168720, at *9
 6 (D. Nev. Nov. 17, 2014). It is well-established that allegations of misappropriation and use of
 7 confidential material, theft of trade secrets, breach of fiduciary duties, or other specific acts di-
 8 rected at forum residents satisfy the intentional conduct requirement. *See, e.g., SVI, Inc. v. Supreme*
 9 *Corp.*, No. 2:16-cv-01098-JAD-NJK, 2017 U.S. Dist. LEXIS 81983, at *11 (D. Nev. May 30,
 10 2017) (alleged misappropriation of trade secrets satisfy intentional act); *T-Mobile USA, Inc. v.*
 11 *Huawei Device USA, Inc.*, 115 F. Supp. 3d 1184, 1203 (W.D. Wash. 2015) (alleged misappropri-
 12 ation of technology for use in creating competitive product); *Advanced Vision Sols., Inc. v. Leh-*
 13 *man*, No. 2:14-cv-01597-APG-NJK, 2015 U.S. Dist. LEXIS 9035, at *9 (D. Nev. Jan. 26, 2015)
 14 (allegations that fiduciary duties to Nevada resident were breached, property stolen, and/or oppor-
 15 tunities diverted). Here, Cydan, Vtesse, and Sucampo intentionally harmed the Hempels by mis-
 16 appropriating their trade secrets. Pls.’ Opp’n FSC Argument II. Simultaneously, Cydan breached
 17 its fiduciary duties to the Hempels in connection with their joint venture by diverting the commer-
 18 cial opportunity to Vtesse. Pls.’ Opp’n FSC Argument III.B.1. And Vtesse and Sucampo unjustly
 19 enriched by Cydan’s intentional breach of those fiduciary duties. Pls.’ Opp’n FSC Argument
 20 III.B.2.

21 *Second*, Defendants “expressly aimed” their conduct at the forum. “Express aiming exists
 22 where the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom
 23 the defendant knows to be a resident of the forum state.” *MYSFYT, Inc. v. Lum*, No. 4:16-cv-03813-
 24 KAW, 2016 U.S. Dist. LEXIS 164592, at *7 (N.D. Cal. Nov. 29, 2016) (citing *CollegeSource,*
 25 *Inc. v. Academyone, Inc.*, 653 F.3d 1066, 1077 (9th Cir. 2011)). Defendants knew that the Hempels
 26 were located in Nevada. It was indicated on Hugh’s LinkedIn profile, in the Business Plan that
 27 Hugh shared with Cydan, on the Confidentiality Agreement, and in emails exchanged between the
 28

1 parties. Vtesse even visited the Hempels *in their home* to lull the Hempels into complacency. Thus,
2 Defendants' misappropriation and use of Protected Material was expressly aimed at the Hempels
3 in Nevada: defendants targeted their conduct at the Hempels, knowing them to be in Nevada.

4 Third, Defendants could have foreseen that the effects of their conduct would be felt in
5 Nevada. *See Alley Cat, Inc.*, 2017 U.S. Dist. LEXIS 164079 at *12. There can be no serious dispute
6 that the harm associated with Defendants' misappropriation of confidential material, theft of trade
7 secrets, breach of fiduciary duties, conversion, and other tortious conduct would foreseeably be
8 felt by the Hempels in Nevada. Cydan and Vtesse were undeniably aware that damage from their
9 conduct would be felt by the Hempels in their home state, which was the business center of their
10 research and development activities. Each of the three prongs is satisfied, and the Court should
11 find "purposeful direction" by Defendants.

b. Defendants' Authorities Are Readily Distinguishable

13 Defendants' authorities are not to the contrary, *see DM PJ 8-9*, and are all distinguished on
14 the facts: In *Morrill v. Scott Financial Corp.*, 873 F.3d 1136 (9th Cir. 2017), the plaintiffs *brought*
15 *suit in Arizona*, based on the defendants' third-party subpoenas issued in Arizona, incidental to
16 extensive *Nevada litigation* involving the parties. The court held that Arizona was not a proper
17 forum, because the alleged tortious acts "arose out of and were component parts of the litigation
18 in Nevada," and the "primary effects of [d]efendants' actions, including the alleged harm, were
19 tied directly to the litigation in Nevada." *Id.* at 1144. Under the unusual facts of that case, the court
20 rejected the notion that "incidental harm" from the issuance of subpoenas in Arizona could support
21 a finding that Arizona had been "expressly targeted" by the defendants' conduct, when the sub-
22 poenas arose out of a Nevada lawsuit. *Id.* Here, however, Cydan and Vtesse *primarily* targeted the
23 Hempels—and their Protected Material—in *Nevada*. The targeting of Nevada residents was not
24 "incidental," *i.e.*, tangentially related, to a separate relationship between the parties primarily based
25 in another jurisdiction. *Morrill* is simply not analogous.

26 Similarly, *Walden v. Fiore*, 134 S. Ct. 1115 (2014), is inapposite. There, the non-resident
27 defendant incidentally came into contact with a Nevada resident in Georgia, while the Nevada

1 resident was traveling from Puerto Rico to Nevada. The court held suit could not be maintained in
 2 Nevada. The defendant in *Walden*, however, did not intentionally solicit a relationship or develop
 3 ongoing obligations to the plaintiff, knowing that the plaintiff was a Nevada resident. In *Walden*,
 4 the *only* link between the defendant and the forum was the residency of the plaintiff. In contrast,
 5 here, Cydan directly solicited a relationship with the Hempels knowing they were situated in Ne-
 6 vada and concerning an asset developed in Nevada, negotiated and executed the Confidentiality
 7 Agreement with the Hempels that designated Nevada law to the parties' relationship, had a
 8 months-long relationship with the Hempels regarding a joint venture intended to have lasted years.
 9 misappropriated the Hempels' Business Plan, knowing the Hempels intended to form Solution
 10 Therapeutics in Nevada, and misappropriated the Protected Material knowing it had been devel-
 11 oped and maintained in Nevada. This is far from incidental or arbitrary contact with a Nevada
 12 resident in a far-flung jurisdiction, the likes of which was at issue in *Walden*.

13 *Axiom Foods, Inc. v. Acerchem International, Inc.*, 874 F.3d 1064 (9th Cir. 2017), is no
 14 more availing: in that case, involving a newsletter alleged to infringe on copyright, the court found
 15 Defendant's conduct was insufficient to establish specific jurisdiction in California, because De-
 16 fendant was located in the United Kingdom, and the overwhelming majority of the alleged in-
 17 fringement was directed at "Western Europe." *Id.* at 1067 ("No more than ten recipients" in Cali-
 18 fornia). Here, by contrast, the claim arises out of one-on-one dealings, and the alleged tortious
 19 conduct was directed *only* at Nevada and at Nevada parties.

20 *Millenium Drilling Co. v. Beverly House-Meyers Revocable Trust*, No. 2:12-cv-00462-
 21 MMD-CWH, 2014 U.S. Dist. LEXIS 24697 (D. Nev. Feb. 25, 2014) (DM PJ 8-9), is also inappro-
 22 site: the dismissed defendant had no contact with forum residents (other than to send a single.
 23 courtesy copy of a document prepared for clients in Massachusetts or Connecticut). Here, Cydan
 24 and Vtesse dealt directly with the Hempels in Nevada.

25 Finally, *Picot v. Weston* (see DM PJ 8) concerns a contract claim—not tort claims—and
 26 thus does not apply "purposeful direction" analysis. 780 F.3d 1206, 1211 (9th Cir. 2015).

27 In sum, Defendants' purposefully directed their activities at Nevada. They solicited Nevada
 28

1 residents to form an on-going relationship, whereby Defendants could obtain access to Protect
 2 Material developed in Nevada. Defendants fostered a joint venture related to a company that the
 3 parties intended to form in Nevada, and then misappropriated the Protected Material, diverted the
 4 opportunity, and intending to cause an injury in Nevada. This Court has specific jurisdiction over
 5 Cydan and Vtesse.

6 **2. Defendants Purposefully Availed Themselves of Nevada**

7 The Complaint also states claims for breach of express and implied contracts against
 8 Cydan. Compl. ¶¶ 96-103, 142; *see also* Pls.' Opp'n FSC Argument I.³ To determine whether
 9 specific jurisdiction exists in a contract case, the court considers whether the defendant "purpose-
 10 fully availed himself of the privilege of conducting activities within the forum state that give rise
 11 to plaintiff's claims." *Casun Invest*, 2018 U.S. Dist. LEXIS 25564, at *8 (citing *Schwarzenegger*,
 12 374 F.3d 797).

13 Fundamentally, "[w]hen parties reach out beyond one state and create continuing relation-
 14 ships and obligations with citizens of another state," they are "subject to regulation and sanctions
 15 in the other State for the consequences of their activities." *Casun Invest*, A.G., 2018 U.S. Dist.
 16 LEXIS 25564 at *8 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985)). To make
 17 a determination of "purposeful availment," the court considers "prior negotiations and contem-
 18 plated future consequences, as well as the parties' actual course of dealing." *Alley Cat, Inc.*, 2017
 19 U.S. Dist. LEXIS 164079, at *10-11; *see also* *Burger King*, 471 U.S. at 478; *Hoag v. Sweetwater*
 20 *Int'l*, 857 F. Supp. 1420, 1426 (D. Nev. 1994).

21 More specifically, "consummat[ing] a transaction with residents of Nevada" is a sufficient
 22 basis upon which to assert specific jurisdiction. *Albertazzi v. Albertazzi*, No. 3:17-cv-00703-
 23 MMD-WGC, 2018 U.S. Dist. LEXIS 7415, at *9 (D. Nev. Jan. 17, 2018) (finding purposeful
 24

25 ³ The contracts are enforceable irrespective of whether the Hempels formed Solution Therapeutics.
 26 *See* Pls.' Opp'n FSC Argument I.A.1; *see also* *Jacobson v. Stern*, 96 Nev. 56, 61 (1980); *T St.*
 27 *Dev., L.L.C. v. Dereje*, Civ. Action No. 05-524 (GK), 2005 U.S. Dist. LEXIS 38713, *14-15
 (D.D.C. Dec. 19, 2005).

1 availment based on “execution of [a] Note and Addendum”). A confidentiality agreement that
 2 “form[s] the basis of an extended relationship between the parties” can be sufficient as the basis
 3 for exercising jurisdiction. *Andritz Inc. v. M&G Finanziaria S.r.l.*, No. 1:15-CV-00796-RWS,
 4 2016 U.S. Dist. LEXIS 36644, at *33 (N.D. Ga. Mar. 22, 2016). And a choice of law provision in
 5 favor of the forum “reinforce[s] a defendants’] deliberate affiliation with the forum State and the
 6 reasonable foreseeability of possible litigation there.” *Burger King*, 471 U.S. at 482. Finally, a
 7 party cannot avoid jurisdiction merely by stating that it never physically entered the state, because
 8 “a substantial amount of business is transacted solely by mail and wire communications across
 9 state lines, thus obviating the need for physical presence within a State in which business is con-
 10 ducted.” *Ognibene v. Lagori*, No. 2:12-cv-01307-RCJ-GWF, 2012 U.S. Dist. LEXIS 151497, at
 11 *15 (D. Nev. Oct. 19, 2012) (quoting *Burger King*, 471 U.S. at 476).

12 Cydan purposefully availed itself of doing business in Nevada. The relationship between
 13 Cydan and the Hempels was intentionally initiated by Cydan, which solicited a business relation-
 14 ship with the Hempels for the purposes of investing in an asset developed in Nevada by Nevada
 15 residents. Cydan reached out to Hugh in Nevada and enticed him to visit Cydan from Nevada.
 16 knowing the effects of its efforts would be felt in Nevada (and only Nevada). In advance of that
 17 meeting, the Hempels presented Cydan with the Business Plan, which established an implied con-
 18 tract relating to Solution Therapeutics, the proposed Nevada C-Corp. The parties then codified
 19 their ongoing, confidential relationship by the Confidentiality Agreement, which was governed by
 20 Nevada law. Thereafter, Cydan and the Hempels participated in the mutual exchange of infor-
 21 mation to and from Nevada, in furtherance of the Nevada-based venture. Thus, Cydan purposefully
 22 availed itself of the laws of Nevada. *See Levinson*, 103 Nev. at 407.

23 Vtesse is subject to personal jurisdiction for the same reasons. Vtesse ratified Cydan’s
 24 Confidentiality Agreement and implied contract regarding the Business Plan by accepting the ben-
 25 efits. *See Chartrand v. Barney’s Club, Inc.*, 380 F.2d 97, 100-102 (9th Cir. 1967); *Jacobson*, 96
 26 Nev. at 60-61 (ratification by subsequently formed company’s acceptance of benefits). Thus,
 27 Vtesse assumed Cydan’s jurisdictional contacts. *See Rees*, 742 F.2d at 768-69).

1 Cydan's authorities are not to the contrary. Cydan contends that the "most analogous" de-
 2 cision is an Eighth Circuit opinion, *Fastpath, Inc. v. Arbela Techs. Corp.*, 760 F.3d 816, 821-25
 3 (8th Cir. 2014), in which the plaintiff asserted breach of a *non-compete* covenant. In that case,
 4 however, (i) the plaintiff contended that a "choice-of-law provision in the Agreement [was] suffi-
 5 cient to establish personal jurisdiction," (ii) there was no competition—*i.e.*, no breach of the agree-
 6 ment—alleged to have taken place within the jurisdiction, and (iii) crucially, there was no contem-
 7 plation by the parties of any "consequences specifically in [the forum]." *Id.* In *Fastpath*, the Eighth
 8 Circuit contrasted *Wells Dairy, Inc. v. Food Movers Int'l, Inc.*, 607 F.3d 515, 519 (8th Cir. 2010),
 9 in which there were "meaningful events in the parties' business relationship" that took place within
 10 the forum. *See Fastpath, Inc.*, 760 F.3d at 821.

11 This case is unlike *Fastpath* in every way. The Hempels do not contend that the choice of
 12 law provision is sufficient to establish jurisdiction, but rather that the Nevada choice of law provi-
 13 sion serves to reinforce the other pertinent considerations, suggesting purposeful availment by
 14 Cydan. *See Burger King*, 471 U.S. at 482. Whereas *Fastpath* dealt with an alleged breach of a *non-*
 15 *compete* agreement, and there was no allegation of competition specifically within the forum, this
 16 case involves allegations of breach of a confidentiality agreement, and misappropriation of confi-
 17 dential information and trade secrets created and situated in Nevada. Moreover, unlike in
 18 *Fastpath*, the parties here contemplated consequences within the forum: sharing confidential in-
 19 formation and trade secrets situated in Nevada, in connection with a Business Plan and Confiden-
 20 tiality Agreement that related to a proposed Nevada-based C-Corp. *See* Business Plan 4. And fi-
 21 nally, meaningful events took place in Nevada: the Hempels created their confidential information
 22 and trade secrets in Nevada, they disclosed information from Nevada for the purpose of Cydan's
 23 evaluation of an investment in a Nevada corporation, and Cydan misappropriated that Nevada-
 24 based material.⁴

25
 26 ⁴ Defendants rely primarily on *Fastpath*, but their other authorities fare no better. *See* DM PJ 6-8.
 27 In *Picot*, plaintiff's "fulfill[ment of] his obligations under the agreement by seeking out investors
 28 and buyers in California" did not create specific jurisdiction over a co-venturer defendant located

1 In sum, Cydan and Vtesse are being called to account in Nevada because they were doing
 2 business in Nevada with Nevada residents concerning a proposed Nevada investment and acting
 3 under Nevada law. They purposefully availed themselves of Nevada. Nothing about their contacts
 4 with the state were “random,” “fortuitous,” or “attenuated.” *Burger King Corp.*, 471 U.S. at 480.

5 **B. Cydan’s and Vtesse’s Contacts
 6 Are Imputed to Cydan II and Sucampo**

7 As set forth below, Cydan II and Sucampo should also be deemed subject to the Court’s
 8 jurisdiction under principles of successor liability, agency, and alter ego status. If there is any
 9 question as to whether the Hempels have adequately established the foundation for such determi-
 10 nation based on the facts adduced to date, the proper course is to proceed with jurisdictional dis-
 11 covery so that the facts may be determined. *See Fairbanks*, 2011 U.S. Dist. LEXIS 110244, at *12
 12 (noting abuse of discretion to deny jurisdictional discovery for purposes of determining whether
 13 contacts should be imputed) (citing *Harris Rutsky*, 328 F.3d at 1135; *Chan v. So'y Expeditions,*
 14 *Inc.*, 39 F.3d 1398, 1406 (9th Cir. 1994); *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d
 15 406, 430 n.24 (9th Cir. 1977).

16 **1. Sucampo and Cydan II are Successors in Interest**

17 The contacts of a business entity “may be imputed to [a successor in interest] if the law of
 18 the forum, Nevada, would hold [the successor] liable for the actions of their alleged predecessor.”
 19 *Fairbanks*, 2011 U.S. Dist. LEXIS 110244 at *10-11. Under Nevada law, a successor is
 20

21 in Michigan because the defendant did not seek out investors or buyers in California. 780 F.3d at
 22 1213. Plainly, the *Picot* opinion would have been different if—as here—the defendant had specif-
 23 ically sought out partners in the forum. Defendants cite *Wellpartner, Inc. v. DeLeon Pharmacy,*
 24 *Inc.*, No. 3:15-cv-01577, 2015 U.S. Dist. LEXIS 158533, at *17 (D. Or. Nov. 24, 2015), for the
 25 principle that “ordinary use of the mail, telephone, or other communications simply do not qualify
 26 as purposeful activity.” But it is not the “ordinary use” of the phone that renders Cydan subject to
 27 the Court’s jurisdiction—it is the solicitation and development of an on-going, confidential busi-
 ness relationship predicated upon doing business in Nevada. And in *Andes Industries Inc. v. Cheng*
Sun Lan, No. 2:14-cv-00400, 2015 Dist. LEXIS 38693 (D. Nev. Mar. 25, 2015), the only connec-
 28 tion to the forum was plaintiff’s incorporation in Nevada: all parties were based in other jurisdic-
 tions, and “the parties’ actual course of dealing did not involve Nevada.” *Id.*, at *10.

1 responsible for the liabilities of its predecessor when (1) the purchaser “expressly or impliedly
 2 agreed to assume such debts”; (2) the transaction “was really a consolidation or a merger”; (3) the
 3 purchasing corporation is “merely a continuation of the selling corporation”; or (4) “where the
 4 transaction was fraudulently made in order to escape liability for such debts.” *Vill. Builders 96,*
 5 *Ltd. P'ship v. U.S. Labs., Inc.*, 121 Nev. 261, 268 (2005) (citation omitted).

6 More specifically, in determining whether a *de facto* merger has occurred, the courts con-
 7 sider various factors, including “(1) whether there has been a continuation of the enterprise; (2)
 8 continuity of shareholders; (3) whether the seller corporation ceased its ordinary business opera-
 9 tions; and (4) whether the purchaser assumed the seller’s obligations. *Id.* at 269. No single factor
 10 is “either necessary nor sufficient to establish a *de facto* merger”; the facts are considered, with
 11 the objective of “properly balanc[ing] the successor corporation’s rights to be free from liabilities
 12 incurred by its predecessor, with the important interest involved in ensuring that ongoing busi-
 13 nesses are not able to avoid liability by transferring their assets to another corporation.” *Id.*

14 The decision in *Aventine-Tramonti Homeowners Association v. Vanguard Piping System*,
 15 Case No. A555328, 2013 Nev. Dist. LEXIS 902 (Nev. 8th Jud. Dist. Ct. May 15, 2013), is instruc-
 16 tive. Applying *Village Builders*, the court found successor liability where, after a 100% stock pur-
 17 chase, the acquirer asserted continuous control over the target’s business operations and subse-
 18 quently transferred the target’s assets to itself. *Id.*, at *9-10. Under the circumstances, the court
 19 held that the acquirer had expressly or impliedly agreed to assume the debts and obligations of the
 20 target. *Id.* Furthermore, because the acquirer simply took over the business operations of the target,
 21 the “mere continuation” exception applied. *Id.*, at *10.

22 As in *Aventine*, Sucampo plainly meets the criteria as a successor to Vtesse. After acquiring
 23 100% of Vtesse’s stock, Sucampo hired all of Vtesse’s employees, fired Vtesse’s chief executive
 24 officer (but hired him as a consultant to Sucampo) and subsumed Vtesse’s assets and its employees
 25 into its operations, moving Vtesse from its offices in Gaithersburg, Maryland to Sucampo’s head-
 26 quarters in Rockville, Maryland. Compl. ¶¶ 17-18 & 93; *see also* Seifert Decl. Ex. 3. Thereafter,
 27 Sucampo touted VTS-270 as its own asset in public filings and public statements and referred to
 28

1 Vtesse as VTS-270's "former owner." Seifert Decl. Ex. 4 at 2; *see also id.* at 1 (referring to VTS-
 2 270 as part of the Sucampo "portfolio"). Thus, Sucampo's acquisition of Vtesse constituted a *de*
 3 *facto* merger, and/or Sucampo was a mere continuation of Vtesse's operations. By implication—
 4 if not expressly—Sucampo agreed to assume the liabilities, and jurisdictional contacts, of Vtesse.

5 The *Village Builders* factors also confirm that the conversion of Cydan to Cydan II should
 6 be continued a *de facto* merger or continuation of operations. One month after orchestrating the
 7 sale of Vtesse to Sucampo for \$200 million, Cydan formed Cydan II on May 10, 2017. Cydan II
 8 has the same investors as Cydan,⁵ and was created for the specific purpose of "continuing the
 9 mission of Cydan, Inc." Seifert. Decl. Ex. 5. Thus, Cydan II was expressly formed as a "continu-
 10 ation of the enterprise" with Cydan and with a "continuity of shareholders." *Vill. Builders 96, Ltd.*,
 11 121 Nev. at 268. Following the formation of Cydan II, the Cydan website converted references to
 12 "Cydan Development" into references to "Cydan II." Compare Seifert Decl. Ex. 7 (Feb. 2017
 13 snapshot of cydanco.com, *see footer*) with Ex. 8 (Apr. 2018 snapshot *same*). Cydan appears, ef-
 14 fectively, to have ceased its operations following the formation of Cydan II.

15 Finally, details concerning the relationship between Cydan and Cydan II are exclusively in
 16 Defendants' possession. Thus, Discovery is warranted to determine, for example, the extent to
 17 which Cydan II assumed liabilities and obligations for Cydan; the extent to which Cydan II bought
 18 out the interests of Cydan; and the extent to which Cydan II assumed Cydan's employees and
 19 business operations. In any event, there is a *prima facie* basis upon which to find the relationship
 20 between these two created successor liability.

21 **2. Sucampo and Cydan II are
 22 Alter Egos or Agents of Cydan and Vtesse**

23 The contacts of a subsidiary may be imputed to its parent "(1) where the subsidiary is the
 24 parent's alter ego, or (2) where the subsidiary is the parent's agent." *Fairbanks*, 2011 U.S. Dist.
 25 LEXIS 110244, at *10; *Aventine-Tramonti*, 2013 Nev. Dist. LEXIS 902, at *11-12. To prove

26
 27 ⁵ Cydan and Cydan II have only one different investor. *See* Seifert Decl. Ex. 5 at 1-3.
 28

1 personal jurisdiction on the basis of alter ego status, a plaintiff must ultimately show “(1) that there
 2 is such unity of interest and ownership that the separate personalities [of the two entities] no longer
 3 exist and (2) that failure to disregard [their separate identities] would result in fraud or injustice.”
 4 *Geanacopulos v. Narconon Fresh Start*, 39 F. Supp. 3d 1127, 1133 (D. Nev. 2014) (quoting *Doe*
 5 v. *Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001)). The determination is a fact-dependent, multi-
 6 factor analysis, that is sharpened with the benefit of discovery. *See Chunghwa Telecom Glob. v.*
 7 *Medcom*, No. 5:13-cv-02104-HRL, 2016 U.S. Dist. LEXIS 138695, at *8-9 (N.D. Cal. Oct. 5,
 8 2016). For the reasons stated above, discovery is warranted to elicit additional facts bearing on the
 9 extent to which Sucampo and Cydan II have acted as alter egos or agents of Vtesse and Cydan,
 10 respectively. *See, e.g.*, *Geanacopulos*, 39 F. Supp. 3d at 1133.

11 **II. DEFENDANTS’ MOTION TO TRANSFER SHOULD BE DENIED**

12 Venue is proper in Nevada and Defendants’ motion to transfer this action to Maryland
 13 should be denied. *See* DM PJ 11-12. “[P]laintiff’s choice of forum is normally given substantial
 14 deference if the plaintiff, as here, is a resident of the district in which the action is brought.”
 15 *Banerjee v. Cont’l Incorporated, Inc.*, 2:16-CV-669 JCM (VCF), 2016 U.S. Dist. LEXIS 141235,
 16 (D. Nev. Oct. 11, 2016). In such cases, Defendant must make a “strong showing of inconvenience
 17 to warrant upsetting the plaintiffs’ choice of forum.” *Id.* at *9. Defendants have failed to do so.

18 Defendants cite eight factors regarding motions to transfer: (1) the location where the rel-
 19 evant agreements were negotiated and executed; (2) the state that is most familiar with governing
 20 law; (3) plaintiff’s choice of forum; (4) the respective parties’ contacts with the forum; (5) the
 21 contacts relating to the plaintiff’s cause of action in the chosen forum; (6) the differences in the
 22 costs of litigation in the two forums; (7) availability of compulsory process to compel attendance
 23 of unwilling non-party witnesses; and (8) ease of access to sources of proof. *See* DM PJ 11 (citing
 24 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000)). “These factors are non-ex-
 25 haustive and the Court ultimately has discretion in deciding which factors to consider and whether
 26 they weigh in favor of transfer.” *Vuori v. Grasshopper Capital LLC*, No. 17-cv-06362-JCS, 2018
 27 U.S. Dist. LEXIS 29731, at *61 (N.D. Cal. Feb. 22, 2018). Here, the balance of those factors

1 strongly favors keeping this action in Nevada rather than overriding the Hempels' choice of forum
 2 in favor of Defendants' preference to be in Maryland.

3 As an initial matter, Defendants concede that the first three factors do not weigh in favor
 4 of transferring this action to Maryland. DM PJ 12. The fourth and fifth factors also favor Nevada:
 5 the Hempels reside in Nevada, the Hempels' developed and maintained their Protected Material
 6 in Nevada, the Business Plan related to a proposed corporation to be formed in Nevada, and the
 7 Confidentiality Agreement was prepared in Nevada and is expressly governed by Nevada law.
 8 And, critically, the Hempels' injury was felt in Nevada. *Cf. SVI*, 2017 U.S. Dist. LEXIS 81983, at
 9 *13-14 (denying motion to dismiss for improper venue in Nevada because misappropriated trade
 10 secrets were developed in Nevada).

11 With respect to the remaining three factors, Defendants do not make a "strong showing of
 12 inconvenience" on any of them. Regarding the sixth, Defendants have retained one of the most
 13 expensive law firms in the country to defend their \$200 million windfall: they can hardly claim
 14 that litigation costs are a significant factor, and have not made any showing that Maryland would
 15 be significantly less expensive. Regarding the seventh, the primary witnesses at trial will be the
 16 parties and their agents. Moreover, compulsory process discovery is available by subpoenas issued
 17 from other District courts, and discovered testimony may be used at trial. Thus, there is no "strong
 18 showing of inconvenience" based on the availability of compulsory process. Finally, regarding the
 19 eighth factor, litigating in Maryland would not give the parties easier access to sources of proof.
 20 The evidence is likely to be found in Nevada, where the Hempels reside, in California, where
 21 the Hempels' primary researchers and physicians are located, *see Compl.* ¶¶ 33-36, in Massachu-
 22 setts, where Cydan reviewed the Hempels' Protected Material before misappropriating that busi-
 23 ness opportunity for Vtesse, *id.* ¶ 15, and at universities and hospitals around the country, where
 24 the NIH-affiliated researchers conducted their clinical trials, *id.* ¶¶ 51 (St. Louis, Missouri) & 78
 25 (Chicago, Illinois). Moreover, discovery is likely to be almost entirely electronic. Maryland offers
 26 the parties no benefits.

27 As Magistrate Cooke noted during the parties' initial conference, out-of-forum defendants
 28

1 now routinely make motions to transfer and motions to dismiss in virtually every case. Surely
2 Defendants would prefer to be in their local court. But the Hempels are due “substantial deference”
3 for their choice to proceed in the District of their residence, which Defendants targeted with their
4 improper conduct. Defendants have made no “strong showing of inconvenience” required to over-
5 come the presumption that the case will proceed here. *Banerjee*, 2016 U.S. Dist. LEXIS 141235
6 at *9. The motion to transfer should be denied.

7 **CONCLUSION**

8 For the foregoing reasons, Defendants’ motions to dismiss for lack of personal jurisdiction
9 and to transfer venue should be denied.

10

11 DATED: April 23, 2018

12 THE O’MARA LAW FIRM, P.C.

13

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